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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 J.L. BOYD and R. CAMOU,
13 Plaintiffs,

14 v.

15 ROBERT LUNA, KATHRYN BARGER,
16 JANICE HAHN, HOLLY MITCHELL,
17 HILDA SOLIS, LINDSEY HORVATH,
HUGO MACIAS, and 9 UNKNOWN
NAMED DEFENDANTS,

18 Defendants.

CASE NO.: 2:24-cv-05716-SPG-AJR

Hon. Sherilyn Peace Garnett

**DEFENDANTS' REPLY IN
SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFFS'
"CORRECTED AND AMENDED"
SECOND AMENDED COMPLAINT
PURSUANT TO FRCP 12(B)(6)
(DKT. 60)**

DATE: January 15, 2025
TIME: 1:30 p.m.
COURTROOM: 5C

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1 **I. INTRODUCTION**

2 By their Motion to Dismiss, Defendants demonstrated why Plaintiffs' Second
3 Amended Complaint (Dkt. 58, "SAC") does not rectify any of the deficiencies
4 identified in the Court's Order (Dkt. 54, "Order") granting Defendants' motion to
5 dismiss the First Amended Complaint ("FAC") and still fails to state viable claims
6 against Defendants as a matter of law. Indeed, the SAC is nearly identical to the doomed
7 FAC and purports to incorporate by reference exhibits that the Court has repeatedly
8 rejected. In response, Plaintiffs' Opposition (Dkt. 62) fails to meaningfully address—
9 or even acknowledge at all in some instances—any of the fatal flaws identified by the
10 Court and Defendants. In fact, the Opposition never once cites or quotes the Court's
11 analysis in its Order to show how the SAC has cured the identified defects.

12 Rather, Plaintiffs' Opposition acknowledges that the only substantive change
13 Plaintiffs made to the SAC was the addition of Paragraph 9(l), which they claim is
14 enough based on the cursory allegations therein that reports from the Sybil Brand
15 Commission for Institutional Inspections and other documents supposedly incorporated
16 by reference "set forth the unconstitutional conditions of confinement at the Jail [] and
17 provide evidence of those conditions." (Dkt. 62 at 8:8-19 (quoting Dkt. 58 at ¶ 9(l).)
18 Plaintiffs' only supporting authority for their self-serving conclusion that this is
19 sufficient to correct all the FAC's flaws is an inapposite order entered by another court
20 in this District. This falls far short of Plaintiffs' pleading obligations, and the SAC once
21 again fails to adequately allege claims against Defendants.

22 As explained in Defendants' Motion to Dismiss, Plaintiffs' purported exhibits
23 are not properly incorporated by reference into the SAC because they are not attached
24 to the SAC and are not described with any detail therein. Even if they were properly
25 incorporated by reference, they are not relevant to Plaintiffs' claims and fail to provide
26 any of the necessary factual allegations that were lacking from the FAC (and now the
27 SAC). Accordingly, because the SAC is otherwise substantively identical to the FAC,
28 it should be dismissed for all the same reasons previous identified by the Court in its

1 Order and Defendants. Indeed, the SAC and Plaintiffs' Opposition do nothing to
2 establish that Defendants are properly named in the SAC or to salvage Plaintiffs' 42
3 U.S.C. § 1983 ("Section 1983") *Monell* claims (Counts 1-3) and 18 U.S.C. § 1961, *et*
4 *seq.* (the Civil Racketeer Influenced and Corrupt Organizations ("RICO") Act) claim
5 (Count 8).

6 Plaintiffs have had multiple opportunities to adequately allege their claims
7 against Defendants, and they have failed to do so. Plaintiffs even had clear guidance
8 from the Court regarding how to correct the defects in their claims, and they failed to
9 comply with the Court's Order. Plaintiffs have thus shown that further amendment
10 would be futile. Accordingly, Defendants respectfully request that the SAC be
11 dismissed in its entirety pursuant to this Motion without leave to amend.

12 **II. ARGUMENT**

13 In their Motion to Dismiss, Defendants demonstrated that the claims set forth in
14 the SAC are still defective as a matter of law for all the same reasons previously
15 identified by Defendants and the Court in its Order. Plaintiffs' Opposition fails to
16 effectively address or rebut any of these arguments.

17 **A. The Factual Misstatements in Plaintiffs' Opposition**

18 At the outset, Defendants feel compelled to address two factual misstatements in
19 Plaintiffs' Opposition. *First*, Plaintiffs once again contend that "[t]he named County
20 supervisor defendants finally have peeped out from behind their bullet-proof desk
21 blotters and have moved to dismiss, having previously failed to do so." (Dkt. 62 at 13
22 n.2.) This is incorrect. The "named County supervisor defendants" previously moved
23 to dismiss Plaintiffs' Complaint and FAC and are listed in the notice of motion. (Dkt.
24 20 at 1:3-7.) They argued that they are improperly named (*id.* at 3:20-5:10) and that
25 the claims asserted against them are deficient as a matter of law (*id.* at 5:11-11:16).
26 Contrary to Plaintiffs' assertion, the "named County supervisor defendants" were very
27 much moving parties in connection with Defendants' motion to dismiss the Complaint
28 and FAC.

1 *Second*, Plaintiffs claim that “Counts 6 & 7 are pled to preserve them for a
2 possible appeal, as current case law does not support them.” (Dkt. 62 at 22 n.4.)
3 Defendants assume that Plaintiffs are referencing their international law claims in
4 Counts 6 and 7 in the FAC, which the Court dismissed with prejudice and Plaintiffs
5 removed from the SAC. (Dkt. 54 at 11:23-25; Dkt. 60-2 at 10–12.) Accordingly, these
6 claims have not been preserved for appeal.

7 **B. Paragraph 9(l) and the SAC’s Purported Exhibits Do Not Supply the**
8 **Necessary Allegations to Adequately Plead Plaintiffs’ Claims, and the**
9 **Cole Court’s Order Is Inapposite**

10 In their Motion to Dismiss, Defendants emphasized that, in response to the
11 Court’s Order highlighting all the deficiencies in the FAC and providing guidance for
12 remedying those defects, the only substantive change Plaintiffs made in the SAC was
13 to add Paragraph 9(l). (Dkt. 60 at 1:19-25, 5:2-21, 7:9–10:18.) Paragraph 9(l) refers to
14 “Exhibit 1-4,” which it claims are attached to the SAC, incorporated by reference, and
15 supposedly “set forth the unconstitutional conditions of confinement at the Jail and []
16 provide evidence of those conditions.” (Dkt. 58 at ¶ 9(l).) Paragraph 9(l) then
17 generically alleges that “the Supervisor defendants must have known of those
18 conditions and took no actions to remedy [them], and their inactions . . . were the
19 moving forces behind the conditions.” (*Id.*) These exhibits are not properly
20 incorporated by reference because, as the Court previously found in connection with a
21 purported exhibit to the FAC, the SAC neither attaches these exhibits (Defendants
22 assume Plaintiffs are referring to “Exhibits 1–4 in Support of Motion for Preliminary
23 Injunction” in Dkt. 57) nor “discuss[es] [them] at any level of detail.” (Dkt. 60 at 7:12–
24 8:11 (citing Dkt. 54 at 2 n.1).) Even if the exhibits were properly incorporated by
25 reference, they are irrelevant to Plaintiffs’ claims and do not provide the missing factual
26 allegations to state viable claims against Defendants. (Dkt. 60 at 8:12–10:18.) All of
27 these documents have also been repeatedly rejected by the Court in connection with
28 Plaintiffs’ previous pleadings and motions. (*Id.*)

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1 In response, Plaintiffs admit in their Opposition that the only substantive change
2 they made to the SAC was the addition of Paragraph 9(l). (Dkt. 62 at 8:8-19.) Plaintiffs
3 simply reproduce Paragraph 9(l) in its entirety and claim in a conclusory fashion that
4 the Court “hardly can decline to consider” the reports from the Sybil Brand
5 Commission for Institutional Inspections (“Sybil Brand reports”) in Exhibit 1 in Dkt.
6 57 and the other purported exhibits because they are supposedly “properly considered
7 on a motion to dismiss” and “need not have been admissible in evidence.” (*Id.* at 8:20-
8 22.) Plaintiffs provide no analysis to support these conclusions and rely solely on an
9 order denying a motion to dismiss in another case in this District (*Cole v. Los Angeles*
10 *Cnty.*, No. 2:23-cv-10392-SB-PD), which Plaintiffs claim “put paid to virtually all of
11 defense counsel’s contentions herein.” (Dkt. 62 at 8:22–9:8, 28:11–29:18.) Paragraph
12 9(l) and Plaintiffs’ purported exhibits are not sufficient to correct the FAC’s fatal
13 defects identified by the Court and Defendants, and the *Cole* order is inapposite.

14 Plaintiffs do not address Defendants’ arguments demonstrating that the Sybil
15 Brand reports and the other purported exhibits are not properly incorporated by
16 reference. Plaintiffs have provided no explanation or details regarding these exhibits in
17 Paragraph 9(l) or their Opposition, and they are not attached to the SAC. Indeed, there
18 are no specific citations or quotations to the exhibits in the SAC or Plaintiffs’
19 Opposition. As the Court recognized in its Order, “[t]he Ninth Circuit has warned that
20 ‘what inferences a court may draw from an incorporated document should . . . be
21 approached with caution.’” (Dkt. 54 at 2 n.1 (citing *Khoja v. Orexigen Therapeutics,*
22 *Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018)).) As explained in Defendants’ Motion, this is
23 an instance in which no inferences should be drawn from the alleged exhibits because
24 Plaintiffs failed to properly incorporate them by reference. (Dkt. 60 at 7:21–8:11.)

25 Even if the exhibits were properly incorporated by reference as Plaintiffs claim,
26 Plaintiffs have also failed to rebut Defendants’ arguments that they are irrelevant to
27 Plaintiffs’ claims, do not remedy the FAC’s pleading defects, and have repeatedly been
28 found unpersuasive by the Court. (Dkt. 60 at 8:12–10:18.) None of the exhibits, nor

Paragraph 9(l), demonstrate the “duration, frequency and consistency” of Plaintiffs’ purported conditions of confinement required to establish a custom that is “so persistent and widespread” as required to satisfy *Monell*. *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). For example, the Sybil Brand reports in Exhibit 1 provide accounts of inspections of only particular Men’s Central Jail (“MCJ”) modules on particular dates at particular times; most of the observations and complaints raised in the Sybil Brand reports do not concern the alleged conditions of confinement to which Plaintiffs object; the complaints at issue in the reports are largely unverified and constitute hearsay; and one of the reports postdates the filing of the initial complaint in this action in July 2024 (Dkt. 57 at 76-92 (report for inspection occurring on August 18, 2024)). The exhibits and Paragraph 9(l) also do not show that Defendants acted with “deliberate indifference” (*Connick v. Thompson*, 563 U.S. 51, 61 (2011)) or that any custom was the “moving force” behind Plaintiffs’ alleged harm (*Monell v. Dep’t of Soc. Servs. of the City of N.Y.*, 436 U.S. 658, 690–91, 694 (1978)). Indeed, Paragraph 9(l), the Sybil Brand reports, and the other exhibits do not contain any factual allegations regarding how Defendants supposedly knew of any of the conditions of confinement alleged and failed to remedy them, or how Defendants are purportedly linked with Plaintiffs’ alleged harm. Accordingly, even if the purported exhibits were properly incorporated by reference, they are irrelevant to Plaintiffs’ claims and do not set forth the necessary factual allegations required to meet Plaintiffs’ pleading burden.

The order entered by another court in this District in *Cole v. Los Angeles County* is not relevant here and does not foreclose Defendants’ arguments as Plaintiffs insist. The operative complaint in the *Cole* case purports to state a *Monell* claim against Defendant Sheriff Robert Luna and the County of Los Angeles (“County”) Board of Supervisors for two alleged conditions of confinement that Plaintiffs similarly assert here (i.e., “bad plumbing” and “roaches”). As a threshold matter, Plaintiffs erroneously state that the motion to dismiss denied by the *Cole* court was made on behalf of the same defendants in this case (Dkt. 62 at 8:23, 28:15-16), but only Defendant Luna was

1 a party to that motion. *See Cole v. Los Angeles Cnty.*, 2024 WL 5116403, at *1 (C.D.
2 Cal. Dec. 11, 2024). The members of the Board of Supervisors had not yet been served
3 or appeared in the action, as the *Cole* court noted in its order. *Id.* at *1 n.1. In fact, the
4 Board of Supervisors defendants agreed to waive proper service and filed their motion
5 to dismiss in the *Cole* case yesterday. (*See Cole v. Los Angeles Cnty.*, No. 2:23-cv-
6 10392-SB-PD at Dkt. 101.) Moreover, the *Cole* court did not hold that the *Monell* claim
7 was adequately pled, but rather focused solely on whether the moving defendants had
8 met their burden for dismissal. (*Cole*, 2024 WL 5116403, at *4–*5.) The *Cole* court
9 found only that the defendants’ analysis in their motion was “insufficient to satisfy their
10 burden to show that dismissal [was] warranted,” and thus the moving defendants in that
11 case did “not show that Plaintiff ha[d] failed to state a *Monell* claim.” (*Id.* at *1, *4.)
12 Specifically, the court found that the defendants had “not developed any argument to
13 show that such an alleged custom” of “unconstitutional conditions of confinement” was
14 “insufficient to support a *Monell* claim.” (*Id.* at *4.) The court further held that the
15 defendants had “fail[ed] to contend” with the Sybil Brand reports by not providing
16 analysis or authority for their assertion that the reports did not give notice of any
17 unconstitutional conditions. (*Id.*) By contrast, Defendants here have met their burden
18 for dismissal through thorough analysis with factual and legal support, as the Court
19 previously found with respect to the FAC and as Defendants have demonstrated in their
20 Motion and herein with respect to the SAC. The order in the *Cole* case is thus wholly
21 inapplicable here.

22 **C. Defendants Are Not Appropriately Named in the SAC**

23 In the SAC, Plaintiffs named the individual Defendants (the County Sheriff, the
24 Chief of Custody Services Division, General Population for the County Sheriff’s
25 Department, and the members of the County Board of Supervisors) in both their official
26 and individual capacities. In their Motion to Dismiss, Defendants established that they
27 are not properly named either way. (Dkt. 60 at 10:19–12:26.)

28 ///

1 1. Defendants Are Not Properly Named in Their Personal Capacities
2 Because the SAC Lacks Any Allegations of Their “Personal
3 Participation” in Purported Misconduct

4 In their Motion to Dismiss, Defendants cited controlling Ninth Circuit authority
5 requiring that Plaintiffs adequately allege Defendants’ “personal participation” in the
6 allegedly unlawful conduct in order to properly name them in their individual
7 capacities. (Dkt. 60 at 10:17–11:16 (citing *Jones v. Williams*, 297 F.3d 930, 934 (9th
8 Cir. 2002); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); and *Nelson v. Cnty. of*
9 *Sacramento*, 926 F. Supp. 2d 1159, 1165 (E.D. Cal. 2013)).) As the Court recognized
10 in its Order, “a plaintiff must allege *facts*, not simply conclusions, that show that [each]
11 individual [defendant] was personally involved in the deprivation of his or her civil
12 rights.” (Dkt. 54 at 6:5-8 (citing *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
13 1998)).) As Defendants explained, the SAC (like the FAC) does not allege any such
14 facts. (Dkt. 60 at 10:17–11:16.)

15 In response, Plaintiffs reproduced excerpts from Paragraphs 9 and 10 in the SAC
16 and the entirety of their Counts 1 and 2 in their Opposition, and then summarily claimed
17 that they “have detailed the specific conduct of the various individual defendants” and
18 thus “sufficiently have alleged liability.” (Dkt. 62 at 17:1–19:14.)¹ Plaintiffs assert that
19 “[n]othing more possibly could be pled without discovery and plaintiffs’ *Monell* claims
20 adequately are pled.” (*Id.* at 19:13-14.) Plaintiffs did not address the defects raised by
21 the Court or Defendants at all. Indeed, they did not point to any factual assertions
22 alleging Defendants’ “personal participation” in the alleged constitutional violations.
23 As a result, Plaintiffs once again do not state any claims against Defendants in their
24 personal capacities.

25 ///

26 _____

27 ¹ Plaintiffs also claim that “[t]here are allegations against the defendants in their
28 individual capacities” and cite a purported allegation that does not appear in the SAC.
(Dkt. 62 at 21:6-13.) Defendants assume that this allegation was cited in the Opposition
in error.

2. Defendants Are Not Properly Named in Their Official Capacities Because the County Is the Real Party in Interest

Defendants contended in their Motion to Dismiss that, to the extent that any claims survive Defendants' Motion (they should not), the County and the Sheriff's Department should be substituted for Defendants following *Monell* because they are the real defendants in interest rather than their individual officials and employees. (Dkt. 60 at 11:17–12:26 (citing *Luke v. Abbott*, 954 F. Supp. 202, 204 (C.D. Cal. 1997) and *Lee v. Gates*, 2001 WL 1098070, at *4 (C.D. Cal. Sept. 10, 2001)).) Indeed, Plaintiffs' own discovery requests in this action show that having the proper parties (i.e., the County and the Sheriff's Department) as the defendants will promote judicial economy and prevent duplication and waste of public resources. (Dkt. 60 at 12:13-26; Dkt. 60-3.)

In response, Plaintiffs admitted that “[s]uing Los Angeles County defendants/officials in their official capacities, as here, is the same as suing the County,” and “suing the supervisor defendants in their official capacities means that the County has been sued.” (Dkt. 62 at 13:7-8, 24-25.) However, Plaintiffs claimed they do not name the County instead simply because they “choose[] not to name it” and they are “the master[s] of [their] complaint.” (*Id.* at 13:24-25, 14:1; *see also id.* at 31:2-4.) Naming Defendants in their official capacities, according to Plaintiffs, “commands their attention” (*id.* at 14 n.3), and substituting the County “would defeat the well-known deterrent purpose of § 1983” because the County would “always [] take the legal heat for those officials through whom it must act” (*id.* at 19:27–20:4).

Plaintiffs also dismissed the authority relied upon by Defendants in their moving papers because they were issued by the Honorable Dickran Tevrizian and Honorable Gary L. Taylor, whom Plaintiffs argue were “government-friendly, civil rights plaintiffs-hostile, right-wing judges.” (*Id.* at 14:9-13; *see also id.* at 20:5-16 (setting forth a misguided and self-serving assessment of *Luke* (as well as other cases not cited by Defendants) as an “incorrect decision[] that overreach[ed] and which created new

1 law in [a] clear example[] of so-called judicial activism . . . engaged in by [a]
2 Republican-appointed judge[]”).) Plaintiffs also claim that *Luke* and *Lee* are
3 inapplicable here because they did not name both Defendants and the County in this
4 suit. (*Id.* at 14:14-18.) Plaintiffs’ arguments actually support Defendants’ position and
5 fail to distinguish *Luke* and *Lee*, which are good law.

6 Plaintiffs’ admissions in their Opposition that suing the individual Defendants is
7 equivalent to suing the County reveals that they will not be prejudiced by Defendants’
8 requested relief. *First*, Plaintiffs misinterpret Section 1983’s purpose and effect
9 regarding official capacity claims. Because suing Defendants in their official capacities
10 is equivalent to suing the County, it follows that the County will in fact “always [] take
11 the legal heat” for Defendants regardless of whether they are individually named.
12 Indeed, the County “must pay any damages awarded” under these circumstances. *See*
13 *Butler v. Elle*, 281 F.3d 1014, 1023 n.8 (9th Cir. 2002). Accordingly, “the well-known
14 deterrent purpose of § 1983” would not be “defeated” by substituting the County and
15 the Sheriff’s Department for Defendants in this action because they are the real
16 defendants in interest rather than their officials and employees.

17 *Second*, the fact that Plaintiffs do not like or agree with the judges who issued
18 the *Luke* and *Lee* opinions does not affect their persuasive value as legal authority.
19 Moreover, *Luke* is analogous because, following *Monell*, it contemplated the exact
20 scenario at issue here where government officials were sued instead of the entity. *See*
21 *Luke*, 954 F. Supp. at 204. Indeed, *Lee* agreed with *Luke*’s reasoning and dismissed
22 official capacity claims against government officials and substituted the government
23 entity where only the officials had been sued. *See Lee*, 2001 WL 1098070, at *4.
24 Accordingly, if any claims survive Defendants’ Motion to Dismiss (they should not),
25 Defendants should be dismissed from the action and the County and Sheriff’s
26 Department added in their stead.

27 **D. The SAC Fails to State a Claim against Defendants**

28 In their Motion to Dismiss, Defendants demonstrated how each of Plaintiffs’

1 asserted claims in the SAC does not remedy the flaws identified by the Court and
2 Defendants and thus still fails as a matter of law.

3 In response, Plaintiffs generally refer to Federal Rule of Civil Procedure 8(a)'s
4 requirement of "a short and plain statement of the claim showing that the pleader is
5 entitled to relief." (Dkt. 62 at 14:19-21, 15:5-8, 16:13-15.) Plaintiffs also repeatedly
6 cite *Conley v. Gibson*, 355 U.S. 41 (1957) and multiple cases applying its outdated
7 pleading standard. (Dkt. 62 at, e.g., 9:17-25, 21:17-21.) *Conley*'s "no-set-of-facts" test
8 was expressly abrogated by *Twombly*'s plausibility standard (*Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 561-64 (2007)) and thus has not been the governing standard
10 for pleadings in nearly two decades. *See Cole*, 2024 WL 5116403, at *3 n.3 ("Plaintiff,
11 again, seeks to apply the 'no-set-of-facts test' from *Conley v. Gibson*, 355 U.S. 41
12 (1957) and cites to numerous pre-*Twombly* cases. The Court has twice explained that
13 *Conley* has been abrogated."). In doing so, Plaintiffs ignored the United States Supreme
14 Court and Ninth Circuit case law cited by Defendants setting forth the elements
15 Plaintiffs are required to plead in order to properly state their claims. Plaintiffs also do
16 not address any of the defects identified by the Court or the Court's clear instructions
17 to correct them in its Order.

18 Plaintiffs acknowledge that they are required to "set forth in their complaint
19 factual allegations, either direct or inferential, regarding each material element
20 necessary to sustain recovery under some actionable theory" (Dkt. 62 at 10:27-11:2),
21 and that "[a] complaint that states the specific acts of the defendants that violated the
22 plaintiffs' rights meets the notice requirements of Rule 8(a)" (*id.* at 15:5-8). However,
23 Plaintiffs do not identify any specific acts of Defendants warranting liability or
24 establish any other elements of their claims and thus fail to satisfy even the bare
25 minimum standard delineated in Rule 8(a). (Dkt. 60 at 7:9-11:16, 13:1-18:11; *see also*
26 Dkt. 54 at 6:1-9:10, 11:26-13:23.)

27 ///

28 ///

1 1. Plaintiffs’ *Monell* Claims Are Devoid of Any Allegations of a
2 Policy, Custom, or Practice That Was the “Moving Force” Behind
3 Their Purported Harm

4 Defendants argued in their Motion to Dismiss that Plaintiffs’ *Monell* claims
5 (Counts 1-3) in the SAC should be dismissed because, as in the FAC, they fail to
6 identify any policy, custom, or practice promulgated by the County as required by
7 *Monell*, let alone one that served as the “moving force” behind Plaintiffs’ alleged harm.
8 (Dkt. 60 at 13:11–16:7 (citing *Monell*, 436 U.S. at 691, 694).) Defendants also argued
9 that Plaintiffs had failed to show that Defendants acted with “deliberate indifference”
10 to the alleged conditions of confinement, which is subject to a “stringent standard” and
11 thus difficult to meet. (*Id.* at 14:26–15:10 (citing *Connick*, 563 U.S. at 61 and *Nelson*,
12 926 F. Supp. 2d at 1169).) Because Counts 1-3 in the SAC are nearly identical to those
13 same counts in the FAC, the Court’s analysis of these claims’ shortcomings in its Order
14 applies with equal rigor. (*Id.* at 15:11-28 (citing Dkt. 54 at 6:19–7:3, 8:24–9:7, 9 n.7).)

15 In response, Plaintiffs contend in their Opposition that they “have pled that the
16 custom of maintaining the Jail as an unconstitutional environment states a claim.” (Dkt.
17 62 at 29:25-26.) Plaintiffs also claim that they have adequately pled that Defendants
18 acted with “deliberate indifference” to Plaintiffs’ constitutional rights. (*Id.* at 17:25–
19 18:8, 29:1-11 (quoting Paragraph 10 in the SAC).) Plaintiffs fall short on both counts,
20 and their *Monell* claims are still insufficiently pled.

21 Try as Plaintiffs might, willing a nebulous purported custom to state a *Monell*
22 claim does not make it so. *Monell* requires identification of particular alleged customs,
23 and a “custom of maintaining the Jail as an unconstitutional environment” is in no way
24 specific. *See Espinoza v. Santa Ana Police Dep’t*, 2020 WL 1223530, at *3 (C.D. Cal.
25 Jan. 28, 2020) (plaintiffs “must specifically describe the alleged policies or customs”
26 in order to state a *Monell* claim) (citing *A.E. ex rel. Hernandez v. Cnty. of Tulare*, 666
27 F.3d 631, 636 (9th Cir. 2012)). Nor have Plaintiffs alleged that the purported conditions
28 of confinement they identify are “founded upon practices of sufficient duration,

1 frequency and consistency” and “so persistent and widespread” that his generic custom
2 constitutes “the standard operating procedure of the local government entity,” “a
3 permanent and well settled city policy,” or “a traditional method of carrying out
4 policy.” *Trevino*, 99 F.3d at 918. Rather, Plaintiffs’ allegations show only “isolated or
5 sporadic incidents” at best, and “[l]iability for improper custom may not be predicated”
6 on this faulty foundation. *Id.* Indeed, Plaintiffs’ allegations pertain only to them and
7 their purported experiences. (Dkt. 58 at ¶ 9.)

8 In addition, the SAC’s conclusory allegations that Defendants acted “with
9 deliberate indifference” because they “caused,” “ratified,” “condoned,” “acquiesced
10 in,” or “otherwise made [Plaintiffs’ harm] possible” and “failed in their duty to train
11 police in proper, allowable, constitutional policing and jail procedures” (Dkt. 58 at
12 ¶ 10) comes nowhere close to satisfying the “stringent standard” of deliberate
13 indifference “requiring proof that a municipal actor disregarded a known or obvious
14 consequence of his action” (*Connick*, 563 U.S. at 61). Nowhere does the SAC identify
15 “a pattern of similar constitutional violations by untrained employees” as required to
16 establish deliberate indifference based on a failure to train. *Id.* at 62. Like the FAC, the
17 SAC lacks factual allegations showing that Defendants had knowledge of Plaintiffs’
18 alleged harm or a pattern of similar constitutional violations by employees and failed
19 to rectify them.

20 Moreover, Plaintiffs did not even attempt to address *Monell*’s requirement that
21 any alleged custom, practice, or policy must be the “moving force” behind their alleged
22 harm; indeed, as in the FAC, there are no facts in the SAC establishing this causation
23 element, only legal conclusions containing the phrase “moving force.” (Dkt. 58 at ¶¶ 6,
24 9(1), 10, 13, 14.) As the Court found in its Order, it “need not credit bare assertions that
25 Defendants ‘participated in, or approved of, condoned, acquiesced in, ratified, or are
26 otherwise legally responsible for the wrongful acts alleged.’” (Dkt. 54 at 6:19–7:3.)
27 “Plaintiffs must do more” than “merely parrot[] the elements for liability,” which are
28 allegations that the Court “need not accept . . . as true.” (*Id.* at 8:24–9:3, 9 n.7.)

1 Accordingly, Plaintiffs' *Monell* claims in the SAC, which are nearly identical to
2 the corresponding claims in the FAC, should once again be dismissed. *See Dougherty*
3 *v. City of Covina*, 654 F.3d 892, 900–01 (9th Cir. 2011).

4 **2. Plaintiffs' RICO Claim Is Duplicative of Their Defective *Monell***
5 **Claims and Lacks Any Specific Facts Establishing Predicate Acts**

6 Defendants asserted in their Motion to Dismiss that Plaintiffs made no changes
7 whatsoever to their RICO claim (Count 8), and thus it is defective for all the same
8 reasons previously identified by Defendants and the Court. Indeed, Plaintiffs' RICO
9 claim falls short because it is predicated on the same facts as Plaintiffs' deficient
10 Section 1983 *Monell* claims. (Dkt. 60 at 16:10-24 (citing *Yagman v. Garcetti*, 2014 WL
11 3687279, at *4 (C.D. Cal. July 9, 2014), *aff'd*, 852 F.3d 859 (9th Cir. 2017) and Dkt.
12 54 at 13:12-14.) In addition, Plaintiffs failed to adequately allege a factual basis for any
13 predicate act under Federal Rule of Civil Procedure 9(b), which reflects a heightened
14 pleading standard that the Court determined applied to Plaintiffs' claim. (Dkt. 60 at
15 16:25–18:11 (citing *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d
16 1393, 1400-01 (9th Cir. 1986)); Dkt. 54 at 12:18-25.)

17 In response, Plaintiffs ignored Defendants' argument that their RICO claim is
18 based on the same facts as their faulty *Monell* claims in their Opposition. Instead,
19 Plaintiffs' Opposition focuses on Defendants' liability as co-conspirators under RICO
20 (Dkt. 62 at 24:6–28:8), despite the Court's holding that Plaintiffs had not adequately
21 alleged the existence of a conspiracy in the FAC, which is nearly identical to the SAC
22 (Dkt. 54 at 7:4–8:2, 9:11–10:3). Plaintiffs contended that their predicate act allegations
23 satisfy Rule 9(b) because the "time, place, and specific content" of their alleged
24 misrepresentations are purportedly supplied by the following conclusory allegation:
25 from 1975 to the present, Defendants were "covering up and attempting to cover up the
26 deplorable conditions at the Jail and failing and refusing to obey many, many court
27 orders to remedy the 'horrific' Jail conditions and making many misrepresentations to
28 this Court about the Jail conditions." (Dkt. 62 at 25:2-11.)

1 By failing to address Defendants’ argument that Plaintiffs’ RICO claim is based
2 on the same facts as their inadequate *Monell* claims, Plaintiffs concede that their RICO
3 claim is insufficiently pled. *See Galindo v. United States*, 2023 WL 3564770, at *5
4 (C.D. Cal. Mar. 15, 2023) (Garnett, J.) (recognizing that a plaintiff concedes that claims
5 should be dismissed by failing to address the defendant’s arguments for dismissal in
6 his opposition brief). Moreover, because the SAC’s RICO claim reflects no changes
7 from the same claim in the FAC, the SAC lacks any specific allegations regarding any
8 predicate acts of fraud or obstruction of justice engaged in by any of the Defendants as
9 previously explained by Defendants and the Court. Despite Plaintiffs’ self-serving
10 assessment, Plaintiffs’ conclusory allegations that Defendants committed fraud and
11 obstructed justice by purportedly “covering up” MCJ conditions, failing to obey court
12 orders to improve the conditions, and making misrepresentations to the Court about
13 these conditions do not afford any of the details regarding the circumstances and
14 content of alleged misrepresentations or any other specific facts that are required for
15 RICO predicate acts under Rule 9(b). *See Schreiber*, 806 F.2d at 1400-01. As the Court
16 found in its Order, these are “the kind of threadbare recitals of the elements of a cause
17 of action that do not suffice to state a claim.” (Dkt. 54 at 13:20-23 (citing *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 678 (2009)).) Accordingly, Plaintiffs’ RICO claim should once
19 again be dismissed.

20 **E. Plaintiffs Should Not Be Granted Leave to Amend**

21 In their Motion to Dismiss, Defendants argued that the SAC should be dismissed
22 with prejudice because Plaintiffs have failed to state viable claims after three
23 opportunities to do so. The Court provided a thorough analysis of the FAC’s
24 shortcomings and clear instructions on how to fix them, and Plaintiffs did not heed any
25 of the Court’s guidance. Instead, Plaintiffs filed the SAC with nearly identical claims
26 to the FAC and improperly attempted to incorporate by reference four exhibits that the
27 Court has repeatedly rejected. Further amendment would thus be futile. (Dkt. 60 at
28 18:12–19:21.)

1 In response, Plaintiffs simply maintain in their Opposition that they should once
2 again “be given leave to amend, with instructions on just how to amend” based on “a
3 generous policy that favors amendments.” (Dkt. 62 at 31:6-15; *see also id.* at 15:9-26,
4 21:21-26.) Plaintiffs do not address their previous failures to adequately allege their
5 claims, nor Defendants’ authority holding that dismissal with prejudice is appropriate
6 following “repeated failure[s] to cure the deficiencies in [Plaintiffs’] pleadings” and
7 Plaintiffs’ “fail[ure] to comply” with the Court’s Order providing “detailed instructions
8 as to what they needed to do to fix the problems with their [SAC].” *Destfino v. Reiswig*,
9 630F.3d 952, 958–59 (9th Cir. 2011). Indeed, Plaintiffs have already been provided
10 “instructions on just how to amend” as they now request (Dkt. 62 at 31:6-15), and they
11 did not follow those instructions. They also concede that amendment would be futile
12 by stating that “[n]othing more possibly could be pled without discovery.” (*Id.* at 19:13-
13 14.) Accordingly, Plaintiffs should not be granted leave to amend, and the SAC should
14 be dismissed with prejudice.

15 **III. CONCLUSION**

16 For the foregoing reasons and those stated in Defendants’ Motion to Dismiss,
17 Defendants respectfully request that the Court grant their Motion and dismiss Plaintiffs’
18 SAC in its entirety without leave to amend.

19
20 DATED: December 31, 2024

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 11-6.2

The undersigned, counsel of record for Defendants Robert Luna, Kathryn Barger, Janice Hahn, Holly Mitchell, Hilda Solis, Lindsey Horvath, and Hugo Macias, certifies that this brief contains 5,070 words and 15 pages, which complies with the word limit in Local Rule 11-6.1 and the page limit in this Court's Standing Order.

DATED: December 31, 2024

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